IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8613 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes : NO

"unreported judgment" section of the Reporter

3. Whether Their Lordships wish to see the fair copy of the judgement? No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No. : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?No : NO

NATWARSINH C NAYAK

Versus

DIST. SUPERINTENDENT OF POLICE

Appearance:

1. Special Civil Application No. 8613 of 1989

MR YN OZA for Petitioner

MR MK DAGLI, AGP for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 19/08/2002

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order to

declare that the provision requiring a candidate to clear oral test is null and void as well as violative of the provisions of Articles 14 & 16 of the Constitution. In the alternative, the petitioner has prayed to quash and set aside the prescription of minimum qualifying marks to be obtained in the oral test by an Unarmed Head Constable for promotion to the post of Unarmed Police Sub-Inspector. The petitioner has further prayed to direct the respondents to prepare the merit list on the basis of written test ignoring the marks in the oral test.

2. The petitioner is an Unarmed Head Constable. The further promotion from the post of Unarmed Head Constable is to the post of Unarmed Police Sub-Inspector, and is governed by the provisions of the Gujarat Police Manual, 1975. As per the provisions prescribed in the Manual, the process of selection of Police Constables for the police training course for the post of Sub-Inspector is through written test as well as oral test. The petitioner being otherwise eligible for promotion, appeared in the written and oral tests conducted between May 10, 1988 and May 12, 1988. The written test comprised three papers, carrying 300, 200 & 200 marks respectively, while 150 marks were reserved for interview. The candidate was required to secure 45% marks in each written paper to qualify for interview. He was further required to secure 75 marks in the interview for being declared successful. The petitioner secured 165, 93 & 94 marks respectively in the three papers and thus, had qualified himself for interview, but in the oral test, he secured 72 marks and was, therefore, declared failed. As the petitioner failed at oral interview, he is not selected for the post of Unarmed Police Sub-Inspector and, therefore, the petitioner has filed the present petition.

3. The petitioner has averred in the petition that the provision requiring a head constable to clear the oral test, is unconstitutional and arbitrary and should be struck down by the Court. In the alternative, it is asserted that prescription of minimum qualifying marks in the oral test, which completely negatives the performance in the written test and makes written test nugatory, is bad in law as well as violative of Articles 14 & 16 of the Constitution. It is mentioned in the petition that having regard to the nature of services, prescription of minimum qualifying marks to be obtained in oral interview, is bad in law. What is claimed is that having regard to the nature of services to be performed, 50 marks ought to have been reserved for interview and,

therefore, reservation of 150 marks for oral interview as well as the requirement that a candidate must obtain 75 marks in the oral test being unconstitutional, should be set aside. In support of the averments made in the petition, the petitioner has placed reliance on the decision of the learned Single Judge of this High Court rendered in Special Civil Application No. 5312 of 1985 on October 27, 1989 and Civil Application No. 2093/87 in Special Civil Application No. 6727/85 and cognate matters decided in December, 1987. Thus, the petitioner has challenged prescription of minimum qualifying marks to be obtained in oral test, and claimed reliefs to which reference is made earlier.

4. I have heard the learned counsel for the parties, at length and in detail, and also considered the record of the case. In my view, the points raised in the petition for consideration of the Court are squarely answered against the petitioner by the decision of the Supreme Court in STATE OF MAHARASHTRA AND OTHERS v. HUSEN S/o. JAFAR SHEIKH AND OTHERS, 1994 Supp.(1) SCC 468 and, therefore, the petitioner is not entitled to the reliefs claimed in the petition. In the case before the Supreme Court, the process of selection of police constables for the Police Training Course at Nasik for the post of Sub-Inspectors was through written test as well as an oral test. The written test comprised three papers, each carrying 100 marks, outdoor test and service record carried 50 marks each, while 100 marks were reserved for interview. The candidate was required to secure 45 per cent marks in each written paper to qualify for outdoor test and interview. He was further required to secure 40 per cent marks in the interview and 50 per cent marks in the aggregate for being declared successful. The High Court held that the prescription of compulsory minimum pass marks for the interview as illegal. Allowing the State's appeal, the Supreme Court has held that the High Court overlooked the fact that the viva voce test has relevance in regard to the factors other than those which are taken care of by the written test and much would depend on the nature of service, but it cannot be said that prescription of minimum marks for passing the viva voce test would always be constitutionally unsustainable. The Supreme Court had explained that the performance of a candidate besides his knowledge in the academic field etc. also has relevance depending on the nature of the service or the duties and functions that he would be required to discharge from time to time and, therefore, the viva voce test is as important as a written test and prescription of minimum passing marks will not per se make a rule

unconstitutional. Further, it is emphasised by the Supreme Court that the performance of a candidate both at the written test and the oral test would give the selector an integrated idea of the candidate's personality and no hard and fast rule could be laid down as to the percentage of minimum marks to be prescribed for clearing the viva voce test because much would depend on the diverse factors which must enter consideration for evaluating the candidate's worth. In the facts of the case which was before the Supreme Court, it was found that the selection was for training to be imparted to constables for ultimate absorption as Sub-Inspectors. It was further found that the total number of marks for the written, oral as well as outdoor test in service record was 500, out of which, 100 marks were reserved for viva voce test and, therefore, reservation for viva voce test worked out to 20 per cent of the total marks. It was also found that the candidate was required to secure a minimum of 40 per cent marks in the viva voce test, which was 8 per cent of the total marks and in the opinion of the Supreme Court, the said prescription, by no stretch of imagination, was excessive.

5. Having regard to the pertinent observations made by the Supreme Court in the above-quoted decision, one has to find out whether the respondents are justified in requiring a candidate to appear in oral test and secure minimum qualifying marks for clearing the same. The need to have viva voce test for selection to the post of Unarmed Police Sub-Inspector hardly needs to be emphasised. The Police Sub-Inspector is required to perform several important duties. Over and above dealing with the members of public, very often he has to undertake challenging task. The person working as Police Sub-Inspector should not only be physically fit and reasonably intelligent, but should be able to perform his duties effectively. There is nothing unreasonable or arbitrary in the stipulation that officers to be selected for higher services and who with the passage of time are expected to man increasingly responsible position in the core services, such as the Administrative Services and the Police Services should be men endowed with personality traits conducive to the levels of performance expected in such services. Academic excellence is one thing, but ability to deal with members of public with tact and imagination is another. As observed by the Supreme Court in Mehmood Alam Tariq & Ors. v. State of Rajasthan & ors. AIR 1988 SC 1451, Administrative and Police Services constitute the cutting edge of the administrative machinery and the requirement of higher traits of personality is not an unreasonable expectation.

Under the circumstances, the requirement that a candidate must clear the oral test, cannot be regarded as unconstitutional or arbitrary. Therefore, the petitioner is not entitled to the declaration that the requirement that a Head Constable to earn promotion to the post of Unarmed Police Sub-Inspector must clear oral test, is either unconstitutional or bad in law.

So far as prescription of minimum qualifying marks to be obtained in the oral test is concerned, the principle laid down by the Supreme Court in STATE OF MAHARASHTRA AND OTHERS v. HUSEN S/o. JAFAR SHEIKH AND OTHERS (supra) will be applicable to the facts of the present case.

6. Applying the ratio laid down by the Supreme Court in the above-quoted decision to the facts of the present case, it is found that the total number of marks for written test as well as interview is 850 out of which, 150 marks are reserved for viva voce test and, therefore, the said reservation works out to 18% of the total marks and cannot be considered to be excessive at all. Further, the requirement that a candidate must secure minimum 75 marks out of 150 reserved for oral test, cannot be considered to be excessive because the reservation works out to 9 per cent of the total marks. Referring to the judgments relied upon by the petitioner in the petition, it is found that order dated September 11, 1987 passed by the learned Single Judge in Special Civil Application No. 1807 of 1987 and order dated December 23, 1987 passed by the learned Single Judge in Civil Application No. 2093 of 1987 in Special Civil Application No. 6727 of 1986, are interim directions and can hardly be regarded as binding precedents. In Special Civil Application No. 5312 of 1985 decided on October 27, 1989 by the learned Single Judge of this Court with other cognate matters, the question posed for consideration of the Court was whether the practical test was required to be considered as of 60 marks or 150 marks and having regard to the facts of the case, the Court held that the practical test must be considered as of 60 marks and not of 150 marks. In my view, the said decision is not applicable to the facts of the present case, and the petitioner is not entitled to any relief on the basis of the said decision. Thus, there is no substance in the petition and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no orders costs. Interim relief granted vide order dated November

26, 1990, is hereby vacated.

(J.M.Panchal,J.)

(patel)